

Cash qualifies as goods and may be confiscated during search proceedings

Smt. Kanishka Matta v. Union of India and Others¹

The question for determination before the division bench of the Hon'ble Madhya Pradesh High Court in this case was whether cash be confiscated by an officer conducting a search under Section 67 of the Central Goods and Services Act, 2017 ('CGST Act').

- Section 67 of the CGST Act pertains to inspection, search, and seizure. The expression used in section 67(2) of the CGST Act is “confiscation of **any documents or books or things**, which in the proper officer's opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place”.
- Thereafter, the second proviso to section 67(2) of the CGST Act authorises the concerned officer to retain the documents or books or things so seized for so long as it is necessary for their examination or for an inquiry or proceeding under the Act.
- Whether cash is included in the word “things” used in section 67(2) of the CGST is at the centre of the issue.

The Hon'ble Madhya Pradesh High Court, in their decision, held that cash should be included in the meaning given to the word ‘things’ used in section 67(2) of the CGST Act, based on the dictionary meaning of the word ‘things’ and the principles of interpretation of statutes namely:

- unreasonable and inconvenient results are to be avoided
- Interpretations that suppress mischief and advance a remedy should be relied upon²

The Hon'ble High Court also remarked that Section 2(17) of the CGST Act, which defines “business”, section 2(31) of the CGST Act, which defines “consideration”, and section 2(75) of the CGST Act, which defines “money” read with section 67 of the CGST Act make it clear that money can be seized.

The Hon'ble High Court finally concluded that and unless and until the investigation is carried out and the matter is finally adjudicated, the question of releasing the amount does not arise.

¹ 2020 (9) TMI 42 - MADHYA PRADESH HIGH COURT

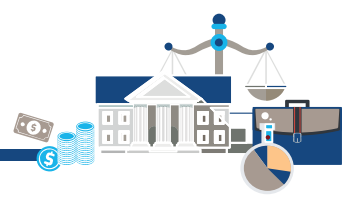
² D. Vinod Shivappa Vs. Nanda Belliappa [(2006) 6 SCC 456]



Dhruva Comments:

An issue that needs consideration is whether the cash can be appropriated against the tax liability due, and therefore need not be returned. Further, it also needs deliberation on whether the tax authorities can retain an amount of more than 10%, which is the only statutory deposit required under law as a condition of filing an Appeal pursuant to issuance of Notice. It is a settled position in law that no recoveries can be made without issuance of a Notice and whether permitting such seizure of cash amount to forced recovery of taxes in the garb of seizure of cash.

It may also be relevant to note that the *pari materia* provisions of Section 132 (1)(c)(iii) of the Income Tax Act, 1961 specifically empowers the authorised officer to “seize any such books of account, other documents, **money**, bullion, jewellery or other valuable article **or thing** found as a result of such search”. One could argue that applying the principle of “*Noscitur a Sociis*”, cash may be considered as a “thing”.





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